

1979 WL 42807 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 13, 1979

*1 Purvis W. Collins, Director
South Carolina Retirement System
Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Collins:

You have requested an opinion as to whether Act No. 97 of 1977, which provides for the establishment of a voluntary deferred compensation plan for State employees, intends that State employees may only participate in such deferred compensation plans as are selected by the Deferred Compensation Commission. The purpose-behind the statute is to provide a tax shelter for up to 25% of the employee's compensation; a principal requirement of the Internal Revenue Code in this situation is that the funds must not be even constructively received by the employee. It follows that the funds remain State funds and such is the implication of § 5, which provides that 'such payment shall not be construed to be a prohibited use of the general assets of the State . . .'. Since State funds are involved, it is obvious that they may only be spent as authorized by statute. In this case the only statutory authorization for investment of deferred compensation funds is found in this Act, and is limited to such plans as the Commission shall select through competitive bidding and contracts. It is therefore the opinion of this Office that those state funds which are earmarked as deferred compensation may only be invested in a plan selected by the Commission.

This opinion does not address the effect of Act No. 97 of 1977 on other deferred compensation plans which are already in existence pursuant to other statutes (as in the case of some teachers) or as authorized by county or local ordinance.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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